IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1759 (SB) OF 2002

Rajendra Singh,
S/o late Kundan Singh Rawat,
R/o Government Degree College, Vikas Nagar,
Dakpathar, Dehradun. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Education, Dehradun.
2. Director, Higher Education, Uttaranchal, Haldwani, Nainital.
3. Principal, Government Degree College, Vikas Nagar, Dakpathar, Dehradun. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri L.K. Tiwari, Advocate for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to regularize the service of the petitioner on the post held by him the respondent no. 3 Later on, he has amended the writ petition and prayed for a writ of certiorari quashing the order dated 21.04.2005 (Annexure No. SCA-1) passed by the respondent no. 2.

3. It has been reported that Order dated 21st April, 2005 has been filed along with Annexure-SCA-1 to the following effect:-

"चूंकि श्री राजेन्द्र सिंह दैनिक वेतनभोगी के रूप में कार्यरत रहे हैं, जिन्हें मा0 उच्च न्यायालय के अन्तरिम आदे ा के अनुसार

वेतनमान का न्यूनतम दिया जा रहे है, तथा वर्तमान में राज्य में दैनिक वेतनभोगी कर्मी के निनियमितीकरण सम्बन्धी कोई नियमावली नहीं है । अतः श्री राजेन्द्र सिंह का चतुर्थ श्रेणी पद पर विनियमतीकरण वर्तमान नियमावलियों के अलोक में नहीं किया जा सकता ।"

4. In view of the aforesaid, I do not find any illegality in the order in as much as the petitioner has been held to be a daily wager and there is no provision for regularization.

5. In ***Secretary State of Karnataka vs. Uma Devi (2006) 4 SCC page 1***, it has been held as under:-

> *"12. In spite of this scheme, there may be occasions, when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the need of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Government do not have the right to engage persons ion various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the*

constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinary not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have engaged without following a due process of selection as envisaged by the constitutional scheme.

14. During the course of the arguments, various orders of the courts either interim of final were brought to our notice. The purport of those orders more or les was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to the legal principles and it is time that this Court settled the law once and for all so that in case the Court finds that such orders should not be made, the courts, especially, the High Courts would be precluded form issuing such directions or passing such orders. The submission of learned counsel for the respondents based on the various orders passed by the high Court or by the Government pursuant to the directions of the Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of

the respondents is that this Court having once directed regularization in Dharwad case all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law this laid down."

15. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In State of Mysore v. S.V. Narayanappa (1967) 1 SCR 128 this Court stated that it was a misconception to consider that regularization meant permanence. In R.N. Nanjundappa v. T. Thimmiah (1972) 1 SCC 409 this Court dealt with an argument that regularization would mean conferring the quality of permanence on

the appointment. This Court state: (SCC pp. 416-17, para 26)

"Counsel on behalf of the respondent contended that regularization wuld mean conferring the quality of permanence on thue appointment whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Botht he contentsions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of he Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner with does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

16. In B.N. Nagarajan v. State of Karnataka (1979) 4 SCC 507 this Court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasized that when rules framed under Article 309 of the Constitution are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the

Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principles, we see no reasons not accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to root of the process, can be regularized and that it alone can be regularized and granting concept and cannot be equated with regularization.

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a nonfundamental element of that process or procedure ahs not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules mad ein that behalf, can be treated as permanent or can be directed to be treated permanent."

6. In view of the above, no interference can be made. However, the petitioner has referred the order passed on 7th July, 2006 to following effect:-

"This Special appeal is directed against the judgment and order dated 22.07.2005 passed by learned single Judge in Writ Petition NO. 1473 (SB) of

2002 Pushkar Singh versus State of Uttaranchal and others.

Learned counsel for the appellant/petitioner confines his grievance that he petitioner may be given weightage including age relaxation, when the recruitment is made in District Chamoli for the post of Driver, considering his past services rendered ion the office of District Youth 'Welfare Officer, Chamoli.

The prayer is innocuous. We provide that as and when the direct recruitment is made on the post of Driver in any office in District Chamoli, the petitioner shall be considered giving him weightage and age relaxation of his past service.

Subject to above, the special appeal is disposed of."

7. In view of the above, I do not find any illegality in the order dated 21st April, 2005. However, this order will not cause any prejudice to the petitioner, if the petitioner is being considered for recruitment on any vacancy on Class-VI.

8. Subject to the aforesaid observation, writ petition lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

25.08.2006
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